IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Writ Petition No.2824 of 2006
With
Criminal Writ Petition No.2825 of 2006
With
Criminal Writ Petition No.2826 of 2006

Virendra Kumar Agrawal Petitioner

Vs.

Gujarat Sindhi Cement Ltd. & ors. Respondents

Mr.Sandeep Velkar for petitioner.

Mr.Amol Doijode for resp.no.1.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 21, 2007.

P.C.

1. Heard the learned counsel for the petitioner as well as the respondent no.1-complainant. The learned APP appears for the State.

2. These three petitions have been filed by the original accused no.3 in Criminal Case Nos. 830/M/2000, 831/M/2000 and 832/M/2000, all instituted

by the respondent no.1 for dishonour of the following cheques:

Sr.No.	Cheque no.	Date	Amount (Rs.)
1.	13584	25/2/2000	34,46,000/-
2.	13593	29/2/2000	50,00,000/-
3.	13592	29/2/2000	1,00,00,000/-
4.	13594	29/2/2000	34,46,000/-
5.	13595	1/3/2000	30,00,000/-
6.	13691	24/4/2000	25,00,000/-
7.	13660	15/6/2000	25,00,000/-
8.	13661	15/6/2000	25,00,000/-

The total amount of the dishonoured cheques comes to Rs.3,23,92,000/-. Against the present petitioner - accused no.3 process was issued on or about 26th September 2000 and the petitioner had approached the Sessions Court by way of revision application against the order of process issued in Criminal Case No.831/M/2000. However, there was delay in filing the said revision and, therefore, M.A.No.1378 of 2006

was filed for condonation of delay in filing the revision application which came to be dismissed by the learned Sessions Court vide order dated 8th August 2006. In the other two petitions, the petitioner has approached this Court directly. Hence these petitions under Article 227 of the Constitution and under Section 482 of Cr.P.C. The only reason that is advanced in support of these petitions is that on the date of the cheques the petitioner was not holding the post of Managing Director of the accused no.1 - Company i.e. M/s. V.K. Industries Ltd., though he continued to be a Director of the said Company. It was further submitted that while holding the post of Director he was not in-charge and responsible for the day to day management of the said accused no.1 - Company and, therefore, he cannot be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In support of these submissions the learned counsel for the petitioner has placed reliance on the following decision :

(1) Monaben Ketanbhai Shah & anr. Vs. State of Gujarat & ors. **[AIR 2004 SC 4274]**

(2) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & anr. **[2005 Cri.L.J. 4140]**

(3) Sabitha Ramamurthy & anr. v. R.B.S. Channabasavaradhya **[2006 Cri.L.J. 4602]**

(4) Saroj Kumar Poddar Vs. State (NCT of Delhi) and anr. **[2007 All MR (Cri) 560 (S.C.)]**

(5) N.K. Wahi Vs. Shekhar Singh & ors. **[AIR 2007 SC 1454]**

(6) K. Srikanth Singh Vs. North East Securities Ltd. & anr. (Criminal Appeal No.919 of 2007 arising out of SLP (Cri.) No.5710 of 2006.

3. A three-Judge Bench in the case of S.M.S. Pharmaceuticals Ltd. (Supra) considered the scheme of Sections 138 and 141 of the Act and stated as under:

> "...The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words "who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence etc." What is required is that the persons who are sought to be made criminally

> liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company..."

In the subsequent decision of the Supreme Court as referred to hereinabove, the law laid down in the case of S.M.S. Pharmaceuticals Ltd. (Supra) has been followed.

4. The learned counsel for the respondent no.1, on the other hand has objected to the maintainability of the petitions on two grounds viz. (a) that the process order was issued on 26/9/2000 and for the first time the same was challenged in revision application filed six years later and thus the ground of delay and (b) out of the three complaints, in two complaints the plea was recorded, charge has been framed and the trial has started as of March 2005 onwards.

5. There is no doubt that the order of issuance of process came to be challenged in the criminal revision application filed in the year 2006 along with an application for condonation of delay. The

said revision application was not numbered and on the contrary it was on a stamp number only. The delay condonation application came to be dismissed by the Sessions Court at Mumbai by the order dated 8th August 2006, whereas in the remaining two complaints the petitioner has directly approached this Court for quashing of the proceedings.

6. In the complaints filed by the present respondent no.1, almost similar averments have been made and it will be pertinent to reproduce the averments made in paras 3, 4 and 5 of the said complaint as under:

> "(3) After reconciliation of various Accounts in respect of the outstanding Liability, which the Accused Company had towards the Complainants and as per the Memorandum of Understanding dated 22nd September, 1998, between the Complainants and the Accused Company, the Accused Company had admitted a total principal liability of Rs. 5,68,92,000/- (Rupees Five Crores Sixty Eight Lac Ninety Two Thousand only). Annexed hereto and marked as Exhibit "B" is a copy of the

said Memorandum of Understanding dated 22nd September 1998.

(4) A Supplemental Agreement dated 6th May, 1999, was also entered into between the Complainants and the Accused Company. Annexed hereto and marked as Exhibit "C" is a copy of the said Supplemental Agreement dated 6th May, 1999.

(5) In furtherance of the said Memorandum of Understanding dated 22nd September, 1998, and Supplemental Agreement dated 6th May, 1999, the Accused Company issued the following three cheques, all drawn on Union Bank of India, Mumbai Samachar Marg, Mumbai - 400 023...."

In para 8 it has been specifically stated that the accused nos.1, 3, 4 and 7 were personally served by hand delivery on 11th August 2000 and that these accused were responsible for and in charge of the day to day activities of the accused company. Accused no.7 was the signatory of the said cheques as has been pointed out in para 11 of the complaint. It is

clear from the averments made in paragraphs 3, 4 and 5 that after the Memorandum of Understanding dated 22nd September 1998 and the Supplemental Agreement dated 6th May, 1999 were signed, the accused - company issued the dishonoured cheques. The cheques were post dated.

7. The learned counsel for the petitioner when called upon, has submitted a copy of the Annual Report of the accused - company - M/s. V.K. Industries Ltd. for the year ending 31st March, 2000 and as per the said report the present petitioner was not holding the post of Managing Director which was in fact held by Mr. M.C. Agrawal and the petitioner continued to be one of the Directors of the said company. The learned counsel for the respondent no.1 has referred to a number of documents signed between the parties in support of his contentions that as on the dates the cheques were issued the petitioner was responsible for the day to day affairs and the administration of the company, though there is no doubt that he relinquished the post of Managing Director in the financial year 1999-2000. However, the Memorandum of Understanding dated 22/9/1998 has been signed by the petitioner on behalf of the

accused - company. Similarly the Supplemental Agreement dated 6/5/1999 has also been signed by him and the said documentary evidence ends with the undertaking furnished by the petitioner in the following words, in the supplementary agreement,

> "I, V.K. AGRAWWALA, son of Shri Ramprakash Agarwal, acting as the Chairman of Messrs. V.K. Industries Limited and in my personal capacity undertake and guarantee due performance of the Memorandum of Understanding as set out herein above and executed between Gujarat Sidhee Cement Limited and Esteco / V.K. Group of companies. In the event of non-performance of the original MoU dated 22.9.98 and Supplemental Agreement dated 6.5.1999, I irrevocably undertake and affirm that I shall be liable to discharge the said financial obligations of Esteco / V.K. Group of Companies to Gujarat Sidhee Cement Ltd. in my personal capacity."

There is an affidavit signed by the petitioner on 29th February 2000 on behalf of the accused - company. The statutory notice issued by the

complainant - company was replied to on behalf of the accused-company through their Solicitors and the said reply is dated 24th August 2000. Para 4 of the said reply clearly indicates that on 23rd August 2000 a meeting was held between the petitioner representing the accused-company and the representatives of the complainant - company. In the said reply it is also made clear that some of the accused like Mr.Sudhir R. Naik, Mr.R.K. Gupta, Mr. Harvinder Singh Kapila and Mr.T.M.Sharma were no longer in the accused - company in the capacity of Directors. Then there is something more and that is the balance sheet for the year ended on 31st March 2000. It has been signed on behalf of the Board of the accused - company by Mr.M.C. Agrawal as the Managing Director and the present petitioner Mr. V.K. Agrawal as the Director on 24th August 2000.

8. All these documents, prima facie, indicate that as on the date the cheques were presented, the petitioner was responsible for the management of the accused - company and, therefore, a triable case has been made out by the respondent no.1 - complainant company against the petitioner. It will not be safe to invoke the inherent powers under Section 482 of

Cr.P.C. and quash the proceedings at this belated stage and on the face of the above documents referred for prima facie purposes.

9. The authorities relied upon by the learned counsel for the petitioner are not applicable in the instant case and whether the petitioner was in charge and / or responsible for the affairs of the accused company is a matter which is required to be decided by adducing evidence on the face of the documents as referred to hereinabove.

10. Hence the petitions fail and they are hereby rejected summarily.

(B.H.MARL